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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,469	10/07/2003	Kevin T. Connelly		6662

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Solar Dynamics Corporation
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EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT PAPER NUMBER

3637

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/679,469

Applicant(s)

CONNELLY ET AL.

Examiner

Timothy M. Ayres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-18 and 20-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-18 and 20-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. The after final amendment has been entered in to the record.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 17-19, 21, 28, 29, 31, and 44-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claims 17, 28, and 47 recites the limitation that the "vertical member" has a rod to receive one of the ends of the angled member. This confuses the examiner, since as best understood from the drawings and specification that the rod is the element (64) that is welded to the angled member (83). For examination purposes of claims 17, 28, and 47 the examiner has considered "said ends" to refer to the ends of the beams as further recited in dependent claims 18, 29, and 48.
5. Claim 21 recites the limitation "said angle" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 7 only recites that the beams are

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angled and doesn't specify "a angle" in reference to the beams and columns for which claim 21 needs in order to recite the limitation of 22 degrees.

6. Claim 31 recites the limitation "said angle" in line 2. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 44 recites the limitation "said angle" in line 2. There is insufficient antecedent basis for this limitation in the claim.

8. Regarding claim 45, in line 11 it is unclear as to what constitutes "considerable extent".

9. In claim 46 lines 2 and 3 recite the same limitations of vertical members and angled members as claim 45 lines 7 and 8 does.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

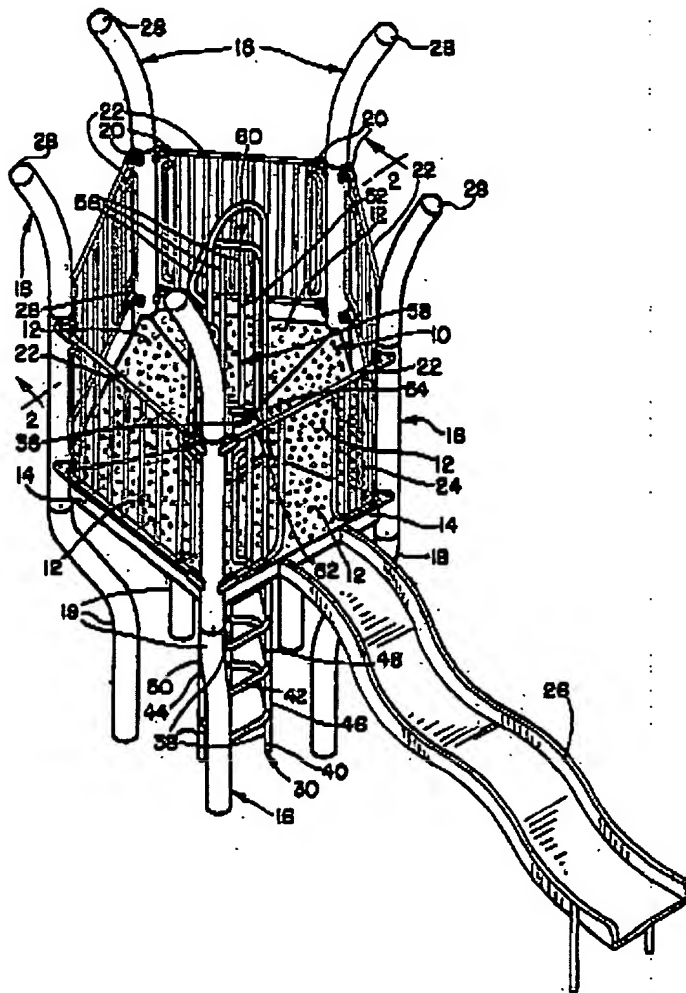
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,165,106 to McBride. McBride '106 discloses a playing platform (10) supported by columns (16). In contact with the platform (10) is pluralities of playing devices (26,30, 70) of which play devices (26,70) extend from the edge of the platform (10). The play area is defined by the platform and the plurality of play devices. The posts (16) are disclosed as having tops (28) though are capable to have a roof to provide shade

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(McBride '106, col. 3, lines 46-48). The posts (16) are angled such that when a roof structure is provided, the canopy will extend beyond the edge of the platform and thus will shade the play area since the platform is part of the play area and there is no recitation in the claims of the play area being completely covered.



McBride '106 Figure 1

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

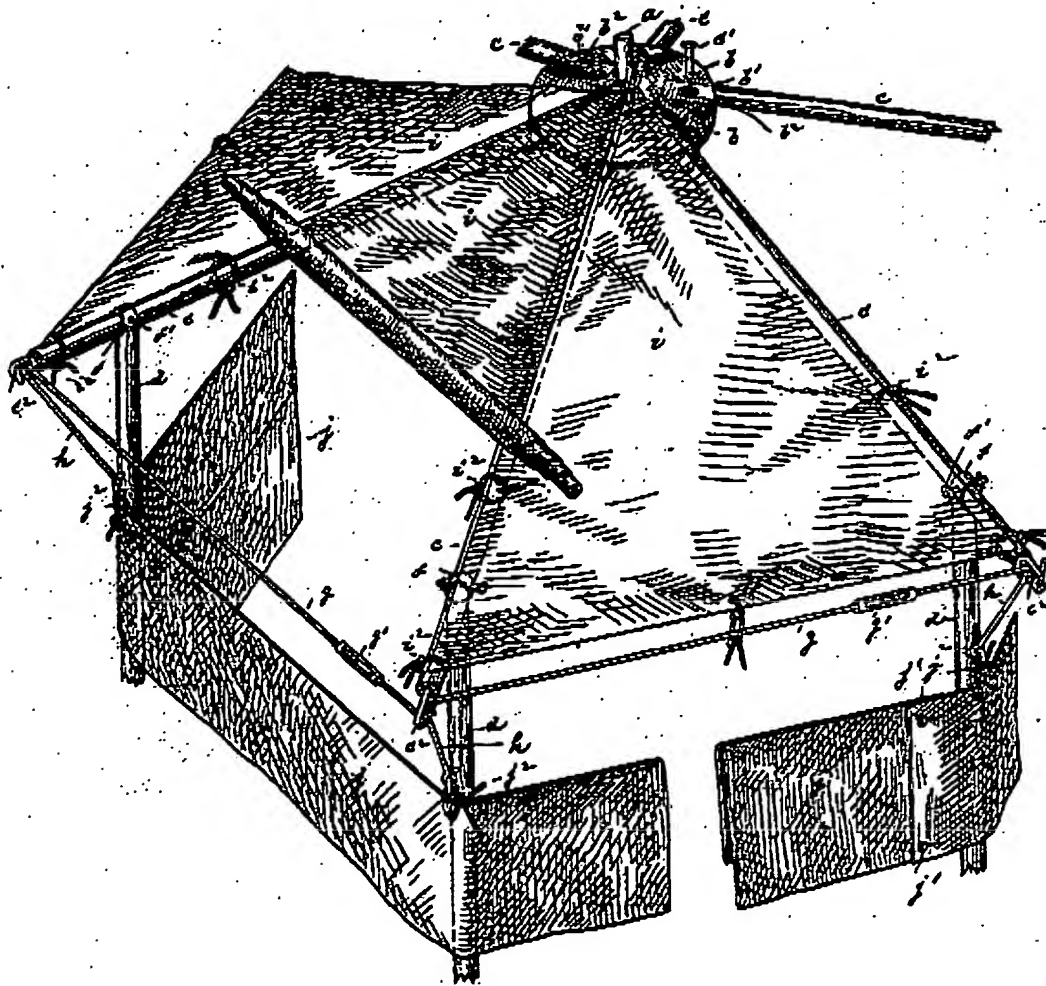
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,165,106 to McBride in view U.S. Patent 589,563 to Jensen. McBride '106 discloses a playing platform (10) supported by columns (16). In contact with the platform (10) is pluralities of playing devices (26,30, 70) of which play devices (26,70) extend from the edge of the platform (10). The play area is defined by the platform and the plurality of play devices. The posts (16) are disclosed as having tops (28) though are capable to have a roof to provide shade (McBride '106, col. 3, lines 46-48). The posts (16) are angled such that when a roof structure is provided, the canopy will extend beyond the edge of the platform and thus will shade the play area since the platform is part of the play area and there is no recitation in the claims of the play area being completely covered. McBride '106 does not expressly disclose the roof with a hip beam at angle of 22 degrees.

14. Jensen '563 discloses a tent with vertical support columns (d). On the top of the vertical support columns (d) is an eye (f) where a hip beam (c) can pass through so that part of the hip beam (c) is cantilevered from the support columns (d) and the other part extends upward to the cap (b). At the eye (f) is a clamp-screw (f') to hold the hip beam

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(c) in place. The tent includes a plurality of hip beams (c). The vertical columns (d) and the hip beams (c) are tubular in shape with tubular ends. Canopy flaps (i) are placed over the hip beams (c). A play area is the area/space inside a first perimeter defined by the wall-strips (j) that wrap around vertical columns (d). The outer edges of the canopy flaps (i) create a second perimeter. The second perimeter being larger than the first as seen in figure 1. The examiner considers the hip beam (c) to be either a hip beam or a cantilever beam since part of it is cantilevered, but not both at the same time.



Jensen '563 Figure 4

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15. At the time of the invention it would have been obvious for a person of ordinary skill in the art to take canopy of Jensen and install it on the columns as the roof of McBride so that children would have shade (McBride '106, col. 3, lines 46-48). It would have been an obvious matter of design choice to modify Jensen by having the hip beams extend at an angle of 22 degrees from the horizontal, since the applicant has not disclosed that having the hip beam extend at this specific angle solves any stated problem or is for any particular purpose and it appears that the structure would perform equally well with the hip beams at any acute angle.

16. Claim 6-10, 12, 13, 15, 16, 22, 23, 25, 27, 32, 33, 36, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,165,106 to McBride in view of U.S. Patent 589,563 to Jensen in view of US Patent 1,878,758 to Clayton. McBride '106 discloses a playing platform (10) supported by columns (16). In contact with the platform (10) is pluralities of playing devices (26,30, 70) of which play devices (26,70) extend from the edge of the platform (10). The play area is defined by the platform and the plurality of play devices. The posts (16) are disclosed as having tops (28) though are capable to have a roof to provide shade (McBride '106, col. 3, lines 46-48). The posts (16) are angled such that when a roof structure is provided, the canopy will extend beyond the edge of the platform and thus will shade the play area since the platform is part of the play area and there is no recitation in the claims of the play area being completely covered. McBride '106 does not expressly disclose the roof with a hip

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beam or a cantilevered beam at angle of 22 degrees, brackets on top of the vertical columns, and a ridge beam.

17. Jensen '563 discloses a tent with vertical support columns (d). On the top of the vertical support columns (d) is an eye (f) where a hip beam (c) can pass through so that part of the hip beam (c) is cantilevered from the support columns (d) and the other part extends upward to the cap (b). At the eye (f) is a clamp-screw (f') to hold the hip beam (c) in place. The tent includes a plurality of hip beams (c). The vertical columns (d) and the hip beams (c) are tubular in shape with tubular ends. Canopy flaps (i) are placed over the hip beams (c). A play area is the area/space inside a first perimeter defined by the wall-strips (j) that wrap around vertical columns (d). The outer edges of the canopy flaps (i) create a second perimeter. The second perimeter being larger than the first as seen in figure 1. The examiner considers the hip beam (c) to be either a hip beam or a cantilever beam since part of it is cantilevered, but not both at the same time.

18. At the time of the invention it would have been obvious for a person of ordinary skill in the art to take canopy of Jensen and install it on the columns as the roof of McBride so that children would have shade (McBride '106, col. 3, lines 46-48). It would have been an obvious matter of design choice to modify Jensen by having the hip beams extend at an angle of 22 degrees from the horizontal, since the applicant has not disclosed that having the hip beam extend at this specific angle solves any stated problem or is for any particular purpose and it appears that the structure would perform equally well with the hip beams at any acute angle.

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19. McBride '106 in view of Jensen '563 does not expressly disclose brackets on top of the vertical columns and a ridge beam. Clayton '758 discloses a merry go around with a platform that rotates around a single column. A removable canopy structure is attached to the framework associated with supporting the platform. The canopy structure is made up of a hip beam (79) that has a cantilevered section sticking through an angled member (B') of bracket (A'). A brace (81) supports the bottom of the bracket (A') by connecting to a vertical member (C') of the bracket (A'). If the bracket (A') is viewed from along the axis of the brace (81) then it can be seen that the angled member (B') of bracket (A') is at an angle other than 90 degrees from the vertical member (C') of the bracket. At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the bracket of Clayton and use it in the place of the eye (f) of Jensen in view of McBride so that the structure is sturdier. The bracket of Clayton will still allow the structure of Jensen to perform its intended role of collapsibility since nothing is to be permanently altered.

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and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

22. Claims 5- 18 and 20-50 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 6,651,685 to Connelly et al. in view of U.S. Patent 6,165,106 to McBride. Although the conflicting claims are not identical, they are not patentably distinct from each other because the columns, brackets, and beams of the canopy structures are identical. Although it is implied that the canopy structure covers the play area, it is also an obvious matter of design choice to make the perimeter of the canopy substantially larger than the perimeter of the play area, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Regarding all of the claims, a playing platform suspended by and between vertical columns is disclosed. McBride '106 discloses a playing platform (10) supported by columns (16). In contact with the platform (10) is pluralities of playing devices (26,30,

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70) of which play devices (26,70) extend from the edge of the platform (10). The posts (16) are disclosed as having tops (28) though are capable to have a roof to provide shade (McBride '106, col. 3, lines 46-48). At the time of the invention it would have been obvious for a person ordinary skill in the art to take the canopy of Connelly '685 and use the playing platform of McBride '106 as described above as the children's play area and use the columns of the platform to support the canopy as implied by McBride to provide shade. The rod is considered to be the connector tube that is recited in claim 4 of patent 6,651,685. The acute angle claimed in Connelly '685 includes the angle of 22 degrees. The method of claims 32-44 is obvious given the structure as described.

Response to Arguments

23. Applicant's arguments filed 11/28/05 have been fully considered and are not persuasive. McBride teaches the platform to be topped by a roof to provide shade or as protection from the general environs and the purpose of the canopy of Jensen is to protect the user from the elements. It therefore makes sense that the canopy of Jensen can be used as the roof of McBride since they perform the same functions and the cantilevered overhang of Jensen combined with the angled columns of McBride will provide coverage of the play devices. Clayton's vertical support member (81) is slanted, but that is just a frame of reference and the vertical support member (81) is not being used, it is the same bracket providing the same function even if rotated to a position where support member (81) is vertical.

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent Publication 2002/0010030 to Zeilinger discloses a platform supported by posts with a roof support by the same columns and a plurality of play device in contact with the platform. US Patent 5,528,875 to Ziegler discloses a playing platform with play devices in contact with and a plurality of columns supporting the platform and the roof. The document from Coolum.com.au/imgs is a phot of a playground with a plurality of columns that support a canopy that is as large as the play area and extends beyond the outside edge of the playing platform. The document from the website of Burke Premier play environment discloses a 12' by 12' shade canopy that uses the same columns to support the canopy and the platform and has cantilevered hip beams. The document from tangled.biz/properties/house/commcenter2 discloses a canopy with hip beams that covers the entire play area. The document from roselane.ms38.org discloses a canopy with hip beams that covers the entire play area. The document form newenglandsite.com discloses a shade canopy that uses the same columns to support the canopy and the platform and has cantilevered hip beams with the canopy extending beyond the platform and covering the play area. The document from ccspoway.com discloses a playground platform supported by coulumns and where some of the same columns are used to support a shade to cover some of the play area. The document from ashbrookindependentschool.com discloses a playground that is covered by roof that has hip beams and cantilever beams supported on columns. The document from surpluscitysales.com discloses 3 photos of interest. Figure 1 shows

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a tent with a beams and columns and a bracket (A) that attaches the columns and beams at an angle. Figure 2 is another view of Figure 1 showing a bracket (B) that attaches the columns and beams at an angle. Figure 3 shows a tent that is on a platform the columns attached to the columns of the platform. The document from Sunports.com, which dates back to April 20th, 2001, discloses photos of canopies. In particular are figures 1-5, which disclose canopies with hip beams over playground platforms.

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMA
12/30/05



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